APPEAL NO. 93026

This appeal arises under the Texas Worker's Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On November 10, 1992, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The record was left open for the carrier to obtain a deposition on written questions from the designated doctor. The hearing was reconvened on December 9, 1992, for the sole purpose of having the deposition of the designated doctor offered into evidence. The issues framed at the contested case hearing (CCH) were: "1. What is [claimant's] correct impairment rating? 2. Whether the Carrier should be allowed to reduce the amount of weekly impairment income benefits to recoup for an overpayment in temporary income benefits?" The hearing officer determined that claimant had a whole body impairment rating of 9% and that the carrier may not reduce the amount of weekly impairment income to recoup an overpayment of temporary income benefits erroneously made to claimant.

Appellant, claimant herein, appeals, disagreeing with the 9% impairment rating of the designated doctor and urging adoption of the treating doctor's rating. Respondent, carrier herein, files a response urging the hearing officer's decision be affirmed.

DECISION

The decision of the hearing officer is affirmed.

Claimant was assisted by an ombudsman at the hearing and in that the claimant did not speak or understand English an interpreter translated the entire proceedings. Claimant's case consisted of the introduction of the medical records of G, Dr. S B, Dr. G-V (spelled G-V in the hearing officer's decision) and Dr. G. Most of the testimony at the CCH dealt with the issue of recoupment. That issue was decided in the claimant's favor, was not appealed and will not be discussed in this decision. Whatever facts regarding the injury that are discussed were obtained from a review of the medical records. The compensable nature of the injury is not disputed.

Claimant was first seen by Dr. G in October 1989 for a right inguinal hernia. The hernia was repaired and claimant returned to work in January 1990 with no work restrictions. On May 21, 1991, claimant again saw Dr. G complaining of pain in the right inguinal area after lifting a heavy weight at work. A diagnosis of "recurrent right inguinal hernia" was made. Because the doctor was out of the country and because of claimant's personal circumstances, surgery was not performed until July 30, 1991. Claimant saw Dr. G on August 8, 1991 for removal of clips, August 27th because of continued pain, September 26th because of continued pain, October 10th because of continued pain and December 5th with complaints of pain in the operative site. At that time claimant was referred to Dr. B for management of claimant's pain.

By report dated February 13, 1992, Dr. B reports examining claimant and suggests claimant's "pain is most likely related to nerve entrapment of the surgical incision site; most likely the right ilioinguinal nerve . . .." Dr. B by report dated April 24, 1992 states that claimant underwent "right ilioinguinal nerve blocks on two different occasions . . . February 13, 1992 and . . . April 2, 1992." It was reported there was some relief and claimant was referred back to Dr. G.

Dr. G-V saw claimant "in consultation on 5/12/92 at the request of the carrier." Dr. G-V impression was "[d]irect and indirect hernia with possible ilioinguinal nerve neuralgia." The doctor does not believe claimant has reached MMI and states, "I would leave the impairment rating to the surgeon who does operate on this patient in the future." Dr. G-V completes a TWCC-69 (Report of Medical Evaluation) showing MMI not reached and saying claimant ". . . is totally disabled at the present time."

Claimant apparently saw Dr. G on June 17, 1992. Dr. G addressed a brief one page statement to the carrier in which he states that he does not see any surgical procedure that would take care of claimant's injury and recommends "permanent disability."

Apparently in July 1992, Dr. G, the treating doctor, completed a TWCC-69 stating MMI was reached July 10, 1992 and assigning a 100% whole body impairment rating. Although Dr. G does not discuss how he arrived at his rating he states "[p]lease note that the pt. received 2 medical opinions at the request of [carrier] caseworker. Both medical doctors recommended permanent disability status."

Although not readily apparent from the file, at some point the Texas Workers' Compensation Commission (Commission) appointed Dr. S as a designated doctor. By letter dated September 1, 1992, the designated doctor submitted a TWCC-69 finding MMI and assigning 9% whole body impairment. In the TWCC-69, the accompanying letter, and in the response to the deposition on written questions, the designated doctor relates the method used in conjunction with the American Medical Association Guides to the Evaluation of Permanent Impairment, third edition (AMA Guides) in determining the impairment rating.

At both the CCH and on appeal, claimant argues that Dr. G, the treating doctor, had much greater contact and was much more familiar with claimant's condition than the designated doctor. Claimant further attacks the designated doctor's rating by pointing out that a physician's assistant actually examined claimant and that the designated doctor was unfamiliar with hernia problems because he was a "back doctor." Claimant also argues that two doctors who examined claimant on the carrier's behalf also gave claimant a 100% impairment rating. As a consequence, claimant argues that the treating doctor's rating plus the other three doctor's ratings constitutes the great weight of medical evidence contrary to the opinion of the designated doctor.

We have repeatedly stressed the importance and "unique position" the designated doctor's report occupies within the scheme of the 1989 Act. Texas Workers' Compensation Commission Appeal Nos. 92412, decided September 28, 1992, and 92686, decided February 3, 1993. A designated doctor selected by the Commission, pursuant to Article 8308-4.26(g) becomes, in essence, the Commission's medical expert. The report of the designated doctor "shall have presumptive weight" and can be overturned only by the great weight of medical evidence to the contrary. We have held that it requires more than balancing evidence, or a preponderance of the medical evidence that can outweigh such a report. Similarly we have observed that no other doctor's report, including a report of a treating doctor, is accorded this special presumptive status. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992.

We would further note that the doctors claimant relies on gave their ratings based on subjective complaints of pain or inability to work, rather than the AMA Guides required by Article 8308-4.24, which states that all determination of impairment under the 1989 Act

must be made in accordance with the AMA Guides.

The hearing officer, in determining that the great weight of other medical evidence is not contrary to the designated doctor's opinion as to the impairment rating, is sufficiently supported by the evidence. The decision of a 9% impairment is not against the great weight and preponderance of the evidence. The decision and order are affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Susan M. Kelley
Appeals Judge